



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-09-92-T
Date: 24 January 2017
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flüge

Registrar: Mr John Hocking

Decision of: 24 January 2017

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**REASONS FOR DECISION ON DEFENCE RENEWED
MOTION FOR STAY OF PROCEEDINGS PENDING APPEAL**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Dragan Ivetić

I. PROCEDURAL HISTORY

1. On 4 October 2016, the Defence filed an interlocutory appeal challenging the Chamber's Decision on Defence Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial dated 4 July 2016 ("Fair Trial Appeal").¹ On 5 October 2016, the Defence filed an interlocutory appeal challenging the Chamber's Scheduling Order dated 9 September 2016 ("Scheduling Appeal").² On 10 October 2016, the Defence filed an Urgent Motion for Stay of Proceedings Pending Appeals ("Urgent Motion").³ On 21 October 2016, the Chamber denied the Urgent Motion.⁴ On 2 December 2016, the Appeals Chamber dismissed the Scheduling Appeal.⁵ Also on 2 December 2016, the Defence filed a motion seeking (i) a stay of proceedings and (ii) a suspension of all the proceedings and the withdrawal of all set deadlines and schedules pending the issuance by the Appeals Chamber of its decision on the Fair Trial Appeal ("Motion").⁶ On 5 December 2016, the Prosecution responded, opposing the Motion ("Response").⁷ Also on 5 December 2016, the Chamber denied the Motion with reasons to follow ("Decision").⁸

II. SUBMISSIONS OF THE PARTIES

2. The Defence submitted that, unless the Motion was granted, the remedy of closing arguments being rescheduled at a later date would no longer be available, resulting in irreversible prejudice to the fair trial rights of the Accused.⁹ The Defence also argued that an official press release issued by the Tribunal's Press Office demonstrated that "other official organs" of the

¹ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion for a Fair Trial and Presumption of Innocence, 4 October 2016.

² *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion Regarding Scheduling Order, 5 October 2016.

³ Defence Urgent Motion for Stay of Proceedings Pending Appeal Decision, 10 October 2016.

⁴ Decision on Defence Urgent Motion for Stay of Proceedings Pending Appeals, 21 October 2016.

⁵ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Decision on Interlocutory Appeal against Scheduling Order, 2 December 2016.

⁶ Defence Renewed Urgent Motion for Stay of Proceedings Pending Appeal Decision, 2 December 2016.

⁷ Prosecution Response to Renewed Urgent Defence Motion for Stay of Proceedings, 5 December 2016.

⁸ T. 44324-44326.

⁹ Motion, para. 5; *see also* Decision on Defence Urgent Motion for Stay of Proceedings Pending Appeals, 21 October 2016, p. 3.

Tribunal were aware that the scheduling of the closing arguments was subject to the outcome of a pending interlocutory appeal.¹⁰

3. The Prosecution submitted that even if the Fair Trial Appeal were to be successful, it would have no impact on the scheduling of the closing arguments as it concerns an alleged fair trial rights violations and that the relief requested did not relate to the scheduling of closing arguments.¹¹ Further, the Prosecution argued that the press release cited by the Defence in the Motion held no weight before the Chamber, and that in any event it was issued prior to the Appeals Chamber dismissing the Scheduling Appeal.¹²

III. APPLICABLE LAW

4. Pursuant to Article 20 (1) of the Tribunal's Statute, a trial chamber must ensure the fairness and expeditiousness of the trial and that proceedings are conducted in accordance with the Tribunal's Rules of Procedure and Evidence ("Rules") and with full respect for the rights of an accused. Under Article 21 of the Tribunal's Statute an accused is guaranteed the right to a fair trial. In accordance with Rule 54 of the Rules, a trial chamber may issue such orders as necessary for the conduct of the trial.

IV. DISCUSSION

5. In coming to the Decision, the Chamber considered that the basis of the Motion was that the Fair Trial Appeal was pending before the Appeals Chamber, and according to the Defence, its outcome could impact the scheduling of the closing arguments. The Chamber found that the Fair Trial Appeal had no immediate bearing on the scheduling of closing arguments, as it focused on an alleged fair trial right violation. In any event, the Chamber found that there could be no irreversible prejudice to the rights of the Accused.

6. With regard to the press release of the Tribunal's Press Office, the Chamber found that its decisions cannot be amended through press releases from the Tribunal's Press Office. The closing

¹⁰ Motion, para. 6.

¹¹ Response, para. 2.

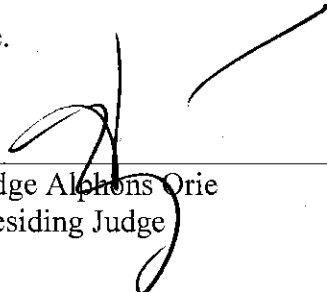
¹² Response, para. 3.

arguments had been scheduled by the Trial Chamber and the fact that interlocutory appeals were pending before the Appeals Chamber had no automatic suspensive effect on such scheduling. In any event, the press release referred exclusively to the Scheduling Appeal and the Appeals Chamber had issued its decision on the Scheduling Appeal prior to the commencement of the closing arguments on 5 December 2016.

V. DISPOSITION

7. It is for these **REASONS**, pursuant to Rule 54 of the Rules, the Chamber denied the Motion.

Done in English and in French, the English version being authoritative.



Judge Alphons Orie
Presiding Judge

Dated this twenty-fourth day of January 2017
At The Hague
The Netherlands

[Seal of the Tribunal]